APPEAL NO. 011051
FILED JUNE 26, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 25, 2001. With regard to the issues before him, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on December 1, 1999, and has an impairment rating (IR) of 15%. The hearing officer's determination of the December 1, 1999, MMI date has not been appealed and has become final. The appellant (carrier) appeals, urging that the claimant should be reexamined or, in the alternative, another doctor's rating should be adopted, on the basis that the designated doctor had misapplied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The carrier objected to the hearing officer's adjustment to the designated doctor's rating as being impermissible. The claimant urges affirmance.

DECISION

Affirmed.

The claimant was employed as an aircraft refurbisher. The parties stipulated that the claimant sustained a compensable right knee injury on _____. The claimant was seen at a clinic and was eventually referred to Dr. JM, who performed surgery in the form of partial lateral meniscectomy on June 6, 1999. The claimant was examined by Dr. S, the carrier's independent medical examination doctor, who certified the claimant at MMI on December 1, 1999, with a 6% IR based on 4% impairment for loss of range of motion (ROM) and 10% impairment for right lower extremity deficit which converted to the 6% IR. The claimant disputed the rating and Dr. M was appointed as the designated doctor.

Although not entirely clear, Dr. M apparently found that the claimant was not at MMI on February 10, 2000, because of possible pending surgery. Thereafter, Dr. JM referred the claimant to Dr. B for evaluation and Dr. B, in a report dated May 1, 2000, certified the claimant at MMI with a 7% IR based on a 3% lower extremity impairment for ROM and 15% lower extremity specific disorder which converted to the 7% IR. The claimant was again seen by Dr. M on June 15, 2000, and Dr. M certified MMI on December 1, 1999, with a 16% IR based on 8% impairment for right lower extremity ROM and a 35% lower extremity impairment for specific disorder combined for 40% impairment of the lower extremity or 16% whole person IR.

The Texas Workers' Compensation Commission (Commission) wrote Dr. M by letter dated August 16, 2000, advising Dr. M of a report from Dr. WB and asking Dr. M to respond. Dr. M did so by letter dated September 1, 2000, attaching handwritten worksheets indicating that he had examined both knees in assigning an IR for the right knee.

Dr. B, in a report dated January 8, 2001, noted that he, Dr. S, and Dr. JM all agreed on the proper interpretation of Table 36 of the AMA Guides that only the lateral meniscus should be rated and that nothing was wrong with the medial meniscus.

The hearing officer, in his Statement of the Evidence, summarizes the sequence of medical reports, and summarizes the carrier's arguments why Dr. M's IR should be rejected. The hearing officer noted that using Dr. M's lower extremity specific rating of 25% for the medial lateral meniscectomy combined with 10% for arthritis and chondromalacia gives a 33% combined rating which combined with the 8% ROM is 38% lower extremity impairment which converts to a 15% IR rather than the 16% IR assigned by Dr. M which is the figure Dr. WB calculated using Dr. M's findings.

The carrier appeals, contending that the hearing officer lacked "authority to combine ratings of two doctors." In this case, the hearing officer did not combine the ratings of two doctors but rather correctly used the combined values table and conversion of lower extremity ratings into a whole body IR and the hearing officer merely noted that Dr. WB had correctly performed the calculations using Dr. M's figures. As we held in Texas Workers' Compensation Commission Appeal No. 000028, decided February 22, 2000, the correct use of the Combined Values Chart is in the nature of a mathematical or clerical error we find no error in the hearing officer's correct application of the Combined Values Chart and Table 42.

The carrier next complains that Dr. M, the designated doctor, was not of the same discipline as the treating doctor. We will note that this is raised for the first time on appeal and we decline to consider that point because it was not preserved for appeal. We would also note that the letterheads of Dr. M, Dr. S, Dr. B, and Dr. WB all indicate they are M.D.'s with various other designations. Other than the carrier's assertion that Dr. JM is a board certified orthopedic surgeon, no other evidence exists that Dr. M is not of the same discipline as the other doctors.

The carrier asserts that Dr. M did not perform a clinical examination of the claimant. There is no evidence to support that contention and Dr. M's report and the claimant's testimony would indicate otherwise.

Lastly, the carrier contends that Dr. M's report is invalid because he adopted the information in Dr. WB's report. Our interpretation is that Dr. WB used Dr. M's figures and findings and correctly combined them. The figures Dr. WB used were all taken from Dr. M's report.

The hearing officer did not err in determining that the claimant's IR was 15% in accordance with the designated doctor's report. The report of a Commission-appointed designated doctor is given presumptive weight. Section 408.125(e). The amount of evidence needed to overcome the presumptive weight of the designated doctor's report is the great weight of other medical evidence.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge